UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,338	12/09/2004	Sven Ole Warnaar	2923-672	2944

6449 7590 11/27/2007

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER	
HALVORSON, MARK	

ART UNIT	PAPER NUMBER
1642	

NOTIFICATION DATE	DELIVERY MODE
11/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No.	Applicant(s)	
	10/517,338	WARNAAR ET AL.	
	Examiner	Art Unit	
	Mark Halvorson	1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,8-12 and 14-17* is/are pending in the application.

4a) Of the above claim(s) *11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,8-10,12 and 14-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1, 2, 4, 8-12, and 14-17 are pending.

Claim 11 has been withdrawn.

Claims 1, 2, 4, 8-10, 12, and 14-17 are currently under examination.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Mark, run through spell-checker before you print this case out. Otherwise I am signing this case.

35 USC § 103(a) rejections maintained

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The rejection of claims 1-2, 4, 8-10, 12, and 14-17 under 35 U.S.C. 103(a) as being unpatentable over Bleumer et al., in view of Pavone is maintained.

Applicants appear to argue that the combination therapy of G250 and Ifn-α has an unexpected result compared to therapy with either G250 or Ifn-α alone. Applicants argue that the co-administration of a G250 antibody with interferon-a leads to at least a 15% increase in therapeutic efficacy when compared to administration of either a G250 antibody or interferon-a alone, along with a reduction of side effects of such an administration of a chemotherapeutic regimen and cite page 4 line 29 – page 5 line 7).

The specification states on page 5, lines 5-7 that

> Compared to an administration of the anti-tumor antibody or the cytokine alone, the therapeutic efficacy of the combined administration is increased by more than 15%.

The specification further states on page 5 lines 18-23 that

> The cytokine is preferably selected from the group consisting of interleukins, e.g. IL-2,3,4,5,6,7,8,9,10,11,12,13,14 and 15, interferons e.g. IFN-.alpha., IFN-.beta. and IFN-.gamma., TNF-.alpha., TNF-.beta., nerve growth factor (NGF), ligands of CD 40, FAS, CD 27 and CD 30, macrophage-inhibiting protein, Rantes, active fragments and pharmaceutically acceptable analogues and derivatives thereof and mixtures thereof.

The specification does not state which cytokine is being administered. paragraph. In fact on page 14 lines 15-32 the specification teaches

> In the present study, approximately 30% of patients exhibited an objective response or a disease stabilization for 22 weeks or longer and therefore the above treatment schedule represents a "clinical benefit" for the treated patient group. A clinical benefit to such an extent has not been observed for this very problematic patient group (metastatic RCC patients, often in the terminal stage of the disease).
>
> Further, the treatment is safe. The combination treatment of i.v. administered cG250 and sc administered IL-2 was well tolerated. No serious adverse events against cG250 were observed. Moderate adverse events typical for IL-2 treatment (and in most cases tolerable due to the low dose administration) and no allergic reactions and no human anti-chimeric antibody (HACA) reactions were observed.

Thus the combination therapy referred to at page 5, lines 5-7 appears to be cG250 and IL-2. Even if the statement on page 5, lines 5-7 was referring to G250 antibody and Ifn-α, the findings would not commensurate in scope with the claims, as amended, because the claims are not drawn to the co-administration of G250 and Ifn-α. Furthermore, there is no actual data demonstrating that the combination therapy of G250 and Ifn-α has a synergistic effect on the treatment of renal cancer over therapy with G250 or Ifn-α alone.

Applicants further argue that a skilled artisan who read the disclosure of Bleumer

would be lead away from arriving at a combined, simultaneous treatment of interferon-a and a G250 antibody. Applicants argue that with respect to treatment of RCC, a skilled artisan interprets sequential administration of medications to mean the first administered medication was found to not be efficacious. Applicants submit that a skilled artisan would not have an expectation of success with respect to the efficaciousness of either interferon-a *or* interleukin-2 for treatment of RCC.

Applicant's arguments have been fully considered but they are not persuasive. A skilled artisan would not interpret the simultaneous administration of medications to mean that the first medication was found to not be efficacious. Bleumer et al describes the pretreatment of patients with (eg IL-2, Ifn-α) prior to the administration of G250 antibody. Bleumer et al does not indicate whether pretreatment with IL-2 and/or Ifn-α had an effect on the overall efficacy of treatment with G250 antibody. Furthermore, the claims, as amended, are open indicating that more than an interferon and an antibody directed against the MN antigen may be administered.

Applicants further argue that Bleumer does not provide any details regarding the dosing regimen of interferon-a and a skilled artisan would not be able to derive any dosing information (i.e., high-dose, low-dose) with respect to interferon-a.

Applicants argue that Pavone does not teach or suggest the use of an anti-tumor antibody or an anti-tumor antibody directed against the MN antigen for treating RCC.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Summary

Claims 1, 2, 4, 8-10, 12, and 14-17 stand rejected

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halvorson, PhD whose telephone number is (571) 272-6539. The examiner can normally be reached on Monday through Friday from 8:30am to 5 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley, can be reached at (571) 272-0898. The fax phone number for this Art Unit is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Halvorson
Patent Examiner
571-272-6539

/Misook Yu/
Primary Examiner, Art Unit 1642